

IN the Matter of WASHINGTON BRANCH OF THE SUN LIFE INSURANCE
COMPANY OF AMERICA and INDUSTRIAL AND ORDINARY INSURANCE
AGENTS UNION No. 21354, INDUSTRIAL AND ORDINARY INSURANCE
AGENTS COUNCIL

Case No. R-1454.—Decided October 2, 1939

Life and Industrial Insurance Business—Jurisdiction: employer engaged in trade, traffic, and commerce in the District of Columbia—*Employees:* canvassers are; not independent contractors—*Investigation of Representatives:* controversy concerning representation of employees: employer's refusal to grant exclusive recognition to petitioning union until determination by Board of unit and representation; rival organizations—*Unit Appropriate for Collective Bargaining:* controversy as to; all insurance agents including debit collectors, canvassers, but excluding assistant managers, district managers, clerical and office employees—*Election Ordered*

Mr. Samuel M. Spencer, for the Board.

Mr. Jacob M. Moses and *Mr. Felix Rothschild*, of Baltimore, Md., for the Company.

Mr. Herbert S. Thatcher and *Mr. George W. Russ*, of Washington, D. C., for the Council.

Mr. George Brody, of Baltimore, Md., and *Boudin, Cohn & Glickstein*, by *Mr. Sidney Elliott Cohn*, for the U. O. P. W. A. and Local 27.

Mr. Emanuel Butter, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On May 15 and June 29, 1939, Industrial and Ordinary Insurance Agents Union No. 21354, Industrial and Ordinary Insurance Agents Council, herein called the Council, filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition and an amended petition, respectively, alleging that a question affecting commerce had arisen concerning the representation of employees of Sun Life Insurance Company of America, Washington, D. C., herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Rela-

tions Act, 49 Stat. 449, herein called the Act. On June 20, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On June 29, 1939, the Acting Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the Council, and upon United Office and Professional Workers of America, C. I. O., herein called the U. O. P. W. A., a labor organization claiming to represent employees directly affected by the investigation. On July 7, 1939, a notice of postponement of the hearing was issued and served upon the same parties. Pursuant thereto a hearing was held on July 31 and August 1, 1939, before Albert L. Lohm, the Trial Examiner duly designated by the Board. The Board, the Company, and the Council, were represented by counsel; the U. O. P. W. A., by its duly authorized representative. All participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the opening of the hearing, counsel for the Company moved to dismiss the amended petition on the grounds that the Act is not applicable to the Company or to its employees in the District of Columbia, and that the business of selling life insurance in the District of Columbia is not commerce and does not affect commerce, within the meaning of Section 2 (6) and (7) of the Act. The Trial Examiner denied the motion. At the termination of the hearing the motion to dismiss was renewed and a motion to strike out all the testimony presented at the hearing was made by counsel for the Company. The Trial Examiner denied these motions. During the course of the hearing the Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On August 15, 1939, United Office and Professional Workers of America, Local 27, herein called Local 27, filed with the Board a motion to intervene, requesting that it be made a party to all further proceedings. The motion was granted by the Board on August 25, 1939.

Pursuant to leave granted, the Company, on August 16, 1939, filed a brief. Pursuant to request therefor by the Council and the Company and notice to all parties, a hearing was had before the Board at Washington, D. C., on August 29, 1939, for the purpose of oral argument. The Company, the Council, the U. O. P. W. A., and Local

27 were represented by counsel and participated in the argument. At the hearing, the Board granted leave to the parties to file, within 3 days, a stipulation covering the investment portfolio of the Company. Pursuant to such leave, a stipulation was filed and on September 8, 1939, the Board ordered it made a part of the record herein.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Sun Life Insurance Company of America is a Maryland corporation with its main office in Baltimore, Maryland, and branch offices in Philadelphia, Pennsylvania; Cleveland, Ohio; Chicago, Illinois; and Washington, District of Columbia. It is with the employees of the Washington office that this proceeding is concerned. The Company is engaged in the sale of industrial and ordinary life insurance.

In 1938 the Company had outstanding approximately 20,000 life-insurance policies which were serviced by the Washington office. In that year the premiums on these policies aggregated approximately \$247,398.00. The Company has outstanding approximately $\frac{1}{10}$ of 1 per cent of all the life insurance outstanding in the United States and approximately $\frac{1}{3}$ of 1 per cent of all the industrial life insurance outstanding in the District of Columbia.

The assets of the Company, consisting of cash in bank, real estate, mortgages, ground rents, bonds, stocks, and policy loans, amount to approximately \$19,000,000.00. Of this, over \$7,000,000.00 is invested in ground rents and mortgages in the States of Maryland, Ohio, Pennsylvania, New Jersey, New York, Massachusetts, and in the District of Columbia. The Company owns real estate in the States of Maryland, New Jersey, and Ohio, and has investments in government securities and in industrial, railroad, and utility bonds in the States of the United States.

At the Washington office the Company employs approximately 60 employees. The average weekly pay roll of the Company for the Washington office is \$2,000.00.

We find that the Company is engaged in trade, traffic, and commerce in the District of Columbia.

II. THE ORGANIZATIONS INVOLVED

Industrial and Ordinary Insurance Agents Union No. 21354, Industrial and Ordinary Insurance Agents Council, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all insurance agents of the Company at its Washington, D. C., office, including debit collectors, canvassers, and as-

sistant managers, and excluding district managers and office and clerical employees.

United Office and Professional Workers of America, C. I. O., is a labor organization affiliated with the Congress of Industrial Organizations, admitting to its membership the employees of the Company. Local 27 is a labor organization chartered by the U. O. P. W. A. admitting to its membership the Company's insurance agents employed in Washington, D. C.

III. THE QUESTION CONCERNING REPRESENTATION

During April and May 1939, several meetings were held between the Council and the Company at which the Council claimed that it represented a majority of the Company's employees in an appropriate unit and requested the Company to bargain with it as the exclusive representative of its employees. The Company and the Council could come to no agreement with respect to an appropriate bargaining unit and the Company was unwilling to recognize the Council as the exclusive collective bargaining representative of its employees, until a determination had been made by the Board with respect to the appropriate bargaining unit and the representation of the employees therein.

On May 16, 1939, the U. O. P. W. A. entered into a contract with the Company, covering the insurance agents employed by the Company in its Philadelphia office. The contract, in part, provides that it will become effective as to other offices of the Company wherever the U. O. P. W. A. represents a majority of the insurance agents.

We find that a question has arisen concerning the representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce within the District of Columbia, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

In its Washington office, the Company employs approximately 60 employees, including 30 debit collectors, from 16 to 20 canvassers, and 9 assistant managers. The Council contends that the appropriate unit consists of all the debit collectors, canvassers, and assistant managers at the Washington office, exclusive of district managers

and office and clerical workers. The Company and the U. O. P. W. A. contend that the debit collectors alone constitute an appropriate unit. In view of the accord in respect to debit collectors we shall include them in the appropriate unit.

Canvassers, who the Company claims are independent contractors, are engaged in soliciting business prospects and selling industrial and ordinary life insurance within territories assigned to them by the district managers. They are paid on a commission basis, except that a successful canvasser, in the discretion of a district manager, may be allowed a \$2 per day "advance" which is kept by him even when his commissions do not equal such advance. Policies of industrial insurance sold by the canvassers are transferred to debit collectors for purposes of collecting the premiums and servicing the policies. Canvassers have not the responsibility that debit collectors have with respect to preventing lapses of policies and servicing them generally.

The Company, in support of its claim, showed that canvassers are not listed on its pay roll and are not under bond as are the debit collectors. There also appears to be a large turn-over of canvassers but the extent thereof was not shown. While debit collectors are referred to, in the contracts under which they work, as employees, this is not true as to the canvassers.

Canvassers receive their pay by means of vouchers sent to the Company's home office by assistant managers and district managers. Canvassers do no work for other insurance companies and devote their entire time to solicitation and sale of the Company's insurance policies and to building the Company's business. They are required to report to the Company's office four or five mornings a week, and they keep records and accounts of all their transactions in the manner and form prescribed by the Company. Canvassers in the Company's employ for 1 year or more receive an annual vacation of 1 week with pay. Those who receive the \$2 per day advance are permitted to join the Company's pension plan; the others, however, are not.

It thus appears that the canvassers bear all the indicia of Company employees. While the work which they perform differs from that of the debit collectors and does not entail the responsibilities of the debit collectors and while the contracts under which they work do not refer to them as employees, their work is a functional part of the business of the Company and they are subject in a large measure to the control and right of control of the Company as to manner and mode of execution. The relationship between the Company and the canvassers is that of employer-employee.¹

¹ See *Matter of Seattle Post-Intelligencer Department of Hearst Publications, Inc. and Seattle Newspaper Guild*, Local No. 82, 9 N. L. R. B. 1262.

We find that the Company's canvassers are employees within the meaning of Section 2 (3) of the Act.

Under all the circumstances, we find that the canvassers should be included in the bargaining unit.

At the Washington office, there are nine assistant managers, each being in charge of approximately six debit collectors or six canvassers. The assistant managers are paid on a salary plus commission basis, the latter being dependent in part upon their own efforts and in part upon the efforts of the employees under their supervision. It is their duty to supervise the employees working under them and to make comments regarding the employees' work. They also recommend to the Company the retention or dismissal of employees hired for a trial period. While assistant managers do not have the right to hire and discharge employees, they do recommend to the district manager such action. Assistant managers are regarded as executives by the employees who work under them.

Although the Council admits the assistant managers to membership and desires their inclusion in the unit, the U. O. P. W. A. desires their exclusion on the ground that their duties are clearly of a supervisory nature. With the latter view, the Company agrees. We will adhere to our usual practice of excluding such employees, where one of the participating labor organizations desires such exclusion.²

We find that all the insurance agents of the Company in its Washington office, including debit collectors and canvassers but excluding assistant managers, district managers, and clerical and office employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The Council claims that it has been designated by a majority of the employees within the appropriate unit as their representative for the purposes of collective bargaining with the Company. At the hearing, the Council introduced documentary evidence to support its claim.

As stated above, on May 16, 1939, the U. O. P. W. A. entered into a contract with the Company, covering the insurance agents employed by the Company in Philadelphia. The contract, in part, provides that it will be extended to other offices of the Company where

² See *Matter of Consumers Power Company and International Brotherhood of Electrical Workers, Local 876*, 9 N. L. R. B. 742; *Matter of International Nickel Company, Inc. and Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, through Steel Workers Organizing Committee*, 11 N. L. R. B. 97.

the U. O. P. W. A. represents a majority. The U. O. P. W. A. claims that since it obtained the contract it has been organizing all insurance agents of the Company, including the employees of the Washington office. We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot.

Although both the Council and the U. O. P. W. A. agreed that eligibility to vote in such an election should be determined as of July 1 and 29, 1939, we see no reason for not determining eligibility as of a more current date. We shall therefore direct that the employees of the Company eligible to vote in the election shall be those in the appropriate unit during the pay-roll period immediately preceding the date of our Direction of Election herein, including employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Sun Life Insurance Company of America at its Washington, District of Columbia, office, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. The canvassers employed by the Company are employees, within the meaning of Section 2 (3) of the Act.

3. All the insurance agents of the Company in its Washington office, including debit collectors and canvassers but excluding assistant managers, district managers, and clerical and office employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation ordered by the Board to ascertain representatives for purposes of collective bargaining with Sun Life Insurance Company of America, Washington, District of Columbia, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction under the

direction and supervision of the Regional Director for the Fifth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the insurance agents of Sun Life Insurance Company of America, in its Washington, District of Columbia, office, in its employ during the pay-roll period immediately preceding the date of this Direction of Election, including debit collectors and canvassers, employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding assistant managers, district managers, and clerical and office employees, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by Industrial and Ordinary Insurance Agents Union No. 21354, Industrial and Ordinary Insurance Agents Council, or United Office and Professional Workers of America, C. I. O., for the purposes of collective bargaining, or by neither.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

October 13, 1939

On October 2, 1939, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding, the election to be held within fifteen (15) days from the date of the Direction under the direction and supervision of the Regional Director for the Fifth Region (Baltimore, Maryland). The Regional Director having requested an extension of time within which to hold the election and having advised the Board that all parties to the proceeding have agreed thereto, the Board hereby amends the Direction of Election issued on October 2, 1939, by striking therefrom the words "within fifteen (15) days from the date of this Direction" and substituting therefor the words "within twenty-five (25) days from the date of this Direction."

15 N. L. R. B., No. 91a.